

154 FERC ¶ 61,040
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 21, 2016

In Reply Refer To:
Navopache Electric Cooperative, Inc.
Docket Nos. EL15-59-000
EL15-59-001
EL15-59-002

McGuireWoods LLP
2001 K Street, NW
Suite 400
Washington, DC 20006

Attention: Julia D. English
Attorney for Public Service Company of New Mexico

Dear Ms. English:

1. On October 29, 2015, you filed, on behalf of Public Service Company of New Mexico (PNM) and Navopache Electric Cooperative, Inc. (Navopache), an Offer of Settlement (Settlement Agreement) in the above-referenced proceedings. The Settlement Agreement resolves all issues that the Commission set for hearing and settlement judge procedures.¹
2. On November 18, 2015, the Commission Trial Staff filed comments in support of the Settlement Agreement. On December 18, 2015, the Settlement Judge certified the uncontested Settlement Agreement to the Commission.²
3. The Settlement Agreement resolves all the issues set for hearing in the above-captioned proceedings. The Settlement Agreement sets forth the amendments to a December 6, 2012 Power Sale Agreement between PNM and Navopache, which revise the terms under which PNM shall sell and deliver and Navopache shall purchase and

¹ *Navopache Elec. Coop., Inc.*, 152 FERC ¶ 61,053 (2015).

² *Navopache Elec. Coop., Inc.*, 153 FERC ¶ 63,026 (2015).

receive enumerated amounts of power and energy at specific agreed-upon rates, between November 1, 2015 and December 31, 2016. The Settlement Agreement states that PNM and Navopache will enter into a separate agreement for electric service for the period of January 1, 2017 through December 31, 2017, under the terms discussed in the Settlement Agreement.

4. Article III establishes the standard of review for any changes to the Settlement Agreement as follows:

[T]his Settlement Agreement and all separate amendments and agreements to effect this Settlement Agreement may be amended only by written agreement of the Parties. In the absence of such mutual agreement, the Parties intend that any modification to the Settlement Agreement or any separate amendment or agreements to effect this Settlement Agreement proposed by a Party after it is approved by the Commission, will be reviewed under the *Mobile-Sierra* public interest standard. *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The standard of review for any modifications to the Settlement Agreement and all separate amendments and agreements to effect this Settlement Agreement proposed by any non-party to the Settlement Agreement, after it is approved by the Commission, including any modifications resulting from the Commission acting *sua sponte*, will be the most stringent standard permitted by law.

Because the Settlement provides that the standard of review for changes by a non-party, including the Commission, to the Settlement is “the most stringent standard permitted by law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

5. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s-length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association Inc. v. FERC*,³ however,

³ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

6. The Commission finds that the Settlement Agreement appears to be fair and reasonable and in the public interest, and it is hereby approved. The Commission’s approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

7. Insofar as the Settlement Agreement and the related appendices were not filed in the eTariff format required by Order No. 714,⁴ PNM is hereby directed to make the required filings within 30 days in eTariff format, in order to implement the Settlement Agreement and reflect the Commission’s action in this order.

8. This letter order terminates Docket Nos. EL15-59-000, EL15-59-001, and EL15-59-002.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).